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SUMMARY RECORD OF THE 1398th MEETING

Held at Headquarters, New York,
on Monday, 27 March 1995, at 3 p.m.

Chairman: Mr. AGUILAR

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The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Report of Haiti (continued) (CCPR/C/105)

1. At the invitation of the Chairman, Mrs. Denerville and Mr. Aubourg (Haiti) took places at the Committee table.

2. Mrs. DENERVILLE (Haiti), replying to earlier questions, said that the National Commission on Truth and Justice was made up of three Haitian members and three foreign nationals: a representative of the United Nations and the Organization of American States, a representative of the Inter-American Commission on Human Rights, and a representative of the Caribbean Community (CARICOM). The Commission had already begun to function and was to meet with the Ministry of Justice that week to coordinate its work. The Commission would receive complaints of human rights violations and assist plaintiffs in obtaining recourse through the courts.

3. Mr. AUBOURG (Haiti) said that the question of the amnesty had originated in the Governors Island Agreement. Although the Haitian Government had to respect the terms of the Amnesty Act, the amnesty itself was limited to crimes committed for political reasons. Under Haitian legislation, however, a crime was still a crime and a citizen could bring a civil action for damages in respect of an offence that was not covered by the amnesty.

4. Mrs. DENERVILLE said that under Haitian law detainees awaiting trial had to be held separately from prisoners serving a sentence. The Committee should understand that there were very serious problems in the Haitian prison system as a result of overcrowding. Nevertheless, the Government was committed to improving prison facilities and, with the help of international organizations, was carrying out programmes to improve prison conditions, feed the prisoners and provide them with health care. The Government was determined to solve those problems, but its efforts were impeded by a lack of resources. In order to reduce overcrowding, sentences were being reviewed in some cases to determine whether imprisonment was necessary.

5. Mr. AUBOURG (Haiti) said that the previous judicial system in Haiti had been almost completely dismantled and the current Government had inherited a catastrophic situation in all areas of the administration of justice. The Government was committed to reforming the entire system and had drawn up a number of programmes to train judges, including the establishment of a school for judges. Selected law students and young lawyers would undergo training courses in order to become qualified in the administration of justice and be appointed as judges. The Committee should clearly understand that the Government firmly intended to establish an effective judicial system and required the necessary time and resources to carry out that task.

6. Mrs. DENERVILLE, referring to the judicial reforms, said that her Government had already carried out numerous training courses and seminars for justices of the peace and examining magistrates with the assistance of the United States Agency for International Development (USAID) throughout the country. That effort had yielded positive results and would be continued. The Government was determined to ensure the effective training of judges in order to establish a sound judicial system in Haiti. Unfortunately, the lack of resources and material means was a serious obstacle in that regard.

7. When the multinational forces had arrived in Haiti prior to the return of President Aristide, the Haitian people had expected that the military and police personnel would be disarmed. Unfortunately, the failure to carry out a disarmament programme had resulted in a widespread climate of violence and insecurity in the country. There were still heavily armed persons who were beyond the reach of the law. The Government had inherited that situation and was committed to establishing an effective police force in order to tackle it. Training courses were being carried out with the help of foreign countries, especially Canada. Once again, however, the lack of funds and general resources constituted a major obstacle.

8. Mr. AUBOURG (Haiti) said that slavery had been abolished in Haiti almost 200 years earlier and did not exist anywhere in the country. Owing to the very precarious economic situation, however, children as well as adults, particularly in impoverished rural areas, were forced to leave their homes and search for work in order to survive. They lived in very difficult conditions, but were not slaves. If slavery existed anywhere in Haiti, the authorities would take measures to combat it.

9. Mrs. DENERVILLE (Haiti) added that there were some cases of enforced domestic service, but not of slavery. The Government had developed a system of inspection and integration for migrant children who had left their families in search of subsistence: specially trained social workers made visits to the home and workplace to ascertain their living conditions, check on their schooling and even recommend sanctions where appropriate. Also, to prevent any instances of trafficking in children, it had to be ensured that all purported adoptions were bona fide. A bill dealing with the plight of migrant minors was being drafted, to protect them from abuse and to keep them from lives of crime, prostitution or drug-trafficking.

10. Mr. AUBOURG (Haiti), acknowledging the Committee's criticisms of his Government's report, recalled the context of the resumption of power by the current Government under very special conditions. The report was meant only to be a renewal of relations with the Committee. As his Government got on with its work and as political, economic and financial conditions improved, the Committee would receive a full report. It should accept the current report for what it was - a gesture of good will. His delegation itself felt encouraged by the re-establishment of contact to move ahead and accomplish more, and would take the Committee's questions as guidelines.

11. Mrs. DENERVILLE assured the Committee that the Ministry of Defence was still in existence and operating under constitutional regulations. The Interim Police Force was made up of 2,500 former military men as well as selected former

Guantanamo refugees. An initial group of 100 had begun training at the Regina Police Academy in Canada and was continuing it in Haiti at the National Police Academy in Port-au-Prince. Starting in February 1995, approximately 400 candidates a month would take part in a four-month training programme to become police officers. In May 1995 the first graduates from the National Police Academy would be assigned to posts throughout the country.

12. Although the 1987 Constitution provided for two separate forces, the police and the army, that provision had never been implemented until the Act Establishing the National Police Force of Haiti had been passed on 20 December 1994. That Act set up a decentralized police force under the Ministry of Justice, reporting to a Director-General appointed for three years as Police Commander in Chief, to head a Department working in close conjunction with the Administration and General Services Department, the Central Administrative Police Department and the Central Judicial Police Department. Other administrative bodies provided for were the Higher National Police Council, the General Police Inspectorate, the National Police Academy and the National Police School. The many troubles Haiti had experienced with its police force were well known. However, the training now put in place should transform it into an effective force and, it was to be hoped, a good one. At the moment it could barely keep order, but that would eventually change for the better. Not too much could be expected after three years of an illegal regime. The Government was monitoring the transition of the police force carefully.

13. Mr. BRUNI CELLI remarked, with reference to amnesty, that the only legislation implementing article 147 of the 1987 Constitution establishing the presidential prerogative of amnesty had been the Amnesty Act of 6 October 1994, adopted on the eve of President Aristide's return to power, pursuant to the Governors Island Agreement and as specifically stipulated in the agreement between the United States Government and the military authorities. That Act was very vague and provided no definition of the crimes covered, thereby giving rise to much uncertainty. The Act specified amendment of the old 1860 Amnesty Act, which had allowed presidential amnesty only for political crimes, i.e. crimes against the Republic and the internal and external security of the State. According to the interpretation of the highest authorities of Haiti, the 1994 Amnesty Act covered only crimes against the Constitution arising from the 1991 coup d'état: consequently, that did not include crimes against persons such as murders, disappearances, torture, rape and the like, whether or not committed for political reasons. That was why the work of the National Commission on Truth and Justice was so crucial, for it would be able to investigate crimes other than the constitutional ones covered by the Amnesty Act.

14. The representatives of Haiti had insisted that slavery did not exist, and yet four years earlier, under the first Aristide Government, the problem of Haitians labouring in the sugar cane fields in the Dominican Republic in conditions of near-slavery had been taken up with the Government of the Dominican Republic and certain agreements to ensure better working conditions had been reached. He would like to know whether the Government intended to review the question, for it was more than a matter of simple migration.

15. Mrs. HIGGINS asked for further clarification of the Amnesty Act in the light of the remarks of Mr. Bruni Celli, who would limit its scope to offences

of a constitutional order. She, however, had been led to a different understanding of the reach of the Amnesty Act by the explanations of Mr. Aubourg, who had stated that the law allowed the State to deal with the penal aspects of the matter, while civil actions by individuals could at the same time continue unimpeded. Did the Act in fact relate to all penal matters concerning all depredations against individuals by those in authority, even if committed with a political motive?

16. She had been very interested to learn of the admirable training programmes the Government was establishing for the judiciary and the police, but would like in addition to know what was being done to ensure the sifting out of those who were inappropriate for the holding of such posts by virtue of their past records and were beyond all hope of training.

17. Mrs. MEDINA QUIROGA asked whether the Government was planning to set up a mechanism to purge from the internal security forces undesirable persons who had not been purged at the outset. Also, she wondered if there was currently any transitional mechanism to deal with human rights issues. She asked how long the National Commission on Truth and Justice would continue to operate and whether it could provide information to the courts and bring complaints.

18. Regarding the Amnesty Act, she, too, had been surprised by the discrepancy between the interpretation of the representative of Haiti and that of Mr. Bruni Celli as to its scope, and would like to know whether it did indeed cover criminal prosecution of all crimes. In the case of Chile, for instance, only criminal prosecution had proved effective; failing that, there would have been no hope of initiating successful civil proceedings.

19. Mr. FRANCIS said that he had understood that the Amnesty Act was in line with the usual Latin American approach to asylum and had therefore assumed that it would cover events that had occurred under the Cédras regime. Upon his reinstatement, President Aristide had assured that there would be no retaliation but had not said that such assurance would apply to crimes on which the law must take its course.

20. He asked Mrs. Denerville whether, before all United States troops left, any thought had been given to deploying the multinational force, in selected areas of the country where full amnesty would be offered to persons who handed in their weapons.

21. Mr. AUBOURG (Haiti), turning first to the question of amnesty, said that under Haitian law many crimes could be described as political crimes, such as a plot or attempt against the person of the Head of State or against the security of the State, and that the Head of State had the power under the Constitution to declare an amnesty in such cases. The investigations of the National Commission on Truth and Justice must proceed before it could be determined in what cases amnesty was appropriate. A "blood crime", no matter what the motive, would be the object of criminal proceedings, from which civil damages might result.

22. Slavery did not exist in Haiti, but the conditions under which some Haitian workers laboured outside Haiti - for example, in the Dominican Republic - were akin to slavery, a situation which the President had condemned. Their

repatriation was a prime concern of the Government, but the country's economic plight prevented it from doing everything it should to remedy the situation. He would convey the concerns of the Committee to the Haitian authorities.

23. Mrs. DENERVILLE (Haiti) said that while the Front révolutionnaire du peuple haitien (FRAPH) no longer existed as an organization, its members still sowed fear and trouble in Haiti. Following the return of President Aristide, a nationwide campaign had been launched to promote civil and political rights and encourage victims to bring complaints before the courts. Although no specific mechanism had been established yet to handle such complaints, personnel in the Ministry of Justice would be trained for that purpose.

24. As to the Government's effort to weed out certain members of the armed forces, she said that it had been necessary to respond in the light of the prevailing chaotic circumstances. Some of the military personnel concerned had been ordered to relinquish their weapons and had been dismissed with two years' early retirement benefits.

25. Mr. BRUNI CELLI said that the reporting State had made valiant efforts to overcome a difficult situation created by three years of military dictatorship. The establishment of the Interim Public Security Force as an entity separate from the armed forces was one of the most important achievements following the restoration of democracy, inasmuch as all security services previously had been in the hands of the armed forces and paramilitary groups and section chiefs - the latter a long-standing symbol of the military autocracy - had been formally eliminated.

26. It was also important to take note of the recent electoral law, the establishment of electoral authorities, the establishment of the electoral roll and the initial preparations for the parliamentary elections. He also welcomed the determination of the Government, and the President in particular, to seek reconciliation and political accommodation.

27. He nevertheless remained particularly concerned at the uncertainties surrounding the status of the armed forces and the lack of clarity as to the command structure and composition of the military. Information concerning the progress of the restructuring effort should be provided.

28. A further cause for concern lay in the fact that, notwithstanding the weapons collection efforts of the Multinational Force in Haiti, many weapons remained hidden. That was particularly dangerous at a time when preparations for elections were under way and the Government was striving to legitimize and strengthen the political process.

29. Mrs. MEDINA QUIROGA said that in the light of the many difficulties facing the reporting State, it would be helpful if the Government established a mechanism separate from the judiciary to process complaints of human rights violations. It also should establish a mechanism for lodging complaints against specific police officers where evidence demonstrated that they had been involved in violations of human rights.

30. In the light of article 278-2 of the Constitution, steps must be taken to ensure that the Covenant functioned properly in the event that a state of siege was declared, since it was her understanding that the Covenant had the status only of an ordinary law.

31. She would be less concerned about the amnesty issue if the Government or the National Commission on Truth and Justice interpreted the law on amnesty as meaning that an amnesty could be declared only in respect of crimes and offences against the security of the State, and not in respect of crimes and offences against persons. The Government and the Commission could invoke the Committee's emphatic position on the issue, namely, that violations of human rights were unpardonable.

32. Mr. FRANCIS said that he was convinced of the reporting State's sincerity in its efforts to meet its obligations under the Covenant and to create a climate in which human rights were respected. In the light of the precarious security situation in the country, both short-term approaches and long-term to security issues were required. An effective gun-control law was needed to create an environment for secure and successful elections.

33. Mr. KRETZMER emphasized that the Committee's objective was to assist the reporting State in protecting the human rights of the people of Haiti. Given the overwhelming problems which the Government faced and the limited resources at its disposal, he was reluctant to offer advice concerning priorities.

34. Endorsing Mrs. Medina Quiroga's recommendation, he added that independent complaint procedures to handle allegations of human rights violations were needed to provide redress in individual cases, but also to demonstrate to the population that the armed forces were subject to civilian control.

35. Mr. KLEIN commended the delegation for the sincerity with which it had responded to the Committee's question, which had illustrated the Government's willingness to protect human rights. Emphasizing the need to re-establish the people's trust in the State, he warned that the recently restored legitimate Government of Haiti might lose authority if it could not fulfil its most important task, which was to ensure the safety of the people.

36. Mr. LALLAH welcomed the candid answers provided by the representatives of Haiti, but stressed that the Committee's goal was to discuss a Government's obligations under the Covenant and that problems should therefore be related to the Covenant. In that regard, he questioned the distinction drawn by the delegation between "blood crimes" and crimes against State security in order to explain the recently adopted Amnesty Act. He agreed with Mrs. Medina Quiroga that the adoption of an amnesty law would encourage a culture of impunity.

37. When devising human rights training programmes for judges and police officers, it was vital to include information about the obligations of the State under the Covenant, particularly with respect to judges, whose decisions often had a much greater effect on respect for human rights than the instructions of the President or the Government.

38. Mrs. EVATT thanked the delegation for the useful information it had provided to the Committee and hoped that the Government of Haiti would fully appreciate the significance of questions relating to the National Commission on Truth and Justice, the Amnesty Act, the police and armed forces and the judicial system for the protection of human rights under the Covenant. Endorsing the view expressed by Mrs. Medina Quiroga regarding the Amnesty Act, she suggested that a commission should also be established to ensure the continuous monitoring of laws and judicial practices in Haiti and to verify their consistency with the Covenant.

39. Mr. POCAR said that the delegation's candid responses to the Committee's questions had provided a clearer picture of the measures currently being adopted in Haiti. Supporting the Committee's position on the Amnesty Act, he said he believed it would be wrong to grant amnesty for any crime that involved human rights violations under the Covenant. It was reassuring to learn that measures were being adopted to address the problem of forced labour with regard to minors, an issue that was dealt with in article 8 of the Covenant.

40. He shared the view that programmes aimed at educating judges, police officers and the general population should include information about the rights guaranteed under the Covenant as a way to encourage a culture of human rights in Haiti. Finally, he recommended that the Government should consider ratifying the Optional Protocols to the Covenant.

41. Mr. PRADO VALLEJO said that there was great concern, not only among the members of the Committee but in Latin American countries in general regarding the question of amnesty. As far as he had understood events, amnesty had not been negotiated or accepted by President Aristide, but had been imposed on the current Government of Haiti as a result of negotiations for the withdrawal of General Cédras. He appealed to the delegation to inform its Government that the consensus of the Committee was that it would be wrong to grant amnesty, thereby setting a precedent of impunity that would impede the restoration of democracy in the country. It was imperative to investigate and punish the systematic and violent crimes of the dictatorship and to ensure that such investigations would continue after President Aristide left office.

42. With regard to programmes to teach respect for human rights in schools, the armed forces and the police, the United Nations Centre for Human Rights could provide vital assistance. In addition, the Government should ensure that all those who had participated in crimes committed under the regime of General Cédras were removed from the armed forces and police, and that the National Commission on Truth and Justice began to function as soon as possible so that the ratification of the Optional Protocols to the Covenant could be hastened.

43. Lastly, he commended Mr. Bruni Celli, Special Rapporteur of the Commission on Human Rights on the situation of human rights in Haiti, for the invaluable information and recommendations he had supplied over the years and for his role in providing support for the democratization of Haiti and for respect for human rights in that country.

44. Mr. BUERGENTHAL commended the delegation for its enthusiasm and commitment to introducing human rights training and to improving the justice system in Haiti. He hoped that the questions raised by the Committee would serve as a check-list for the Government as to the type of information the Committee would request in the future regarding the situation of human rights in that country. He supported the position of the Committee regarding the Amnesty Act and agreed that Haiti's international obligations should be included in official training programmes in order to universalize the struggle for respect for human rights and give strength to national efforts. He urged the Government of Haiti to ratify the Optional Protocols to the Covenant and to recognize the jurisdiction of the Inter-American Court of Human Rights.

45. Mr. ANDO reiterated the gratitude expressed by other Committee members to the representatives of Haiti for their honesty and urged the Government of Haiti to recognize its international obligations under the Covenant. When devising human rights training programmes for members of the judiciary, the military and the police, the Government should not hesitate to request the assistance of the international community.

46. Mrs. DENERVILLE (Haiti) thanked the Committee for its constructive comments and recommendations, which she would transmit to her Government. The issue of the ratification of the Optional Protocols to the Covenant could be addressed as soon as parliamentary elections had taken place.

47. The CHAIRMAN thanked the delegation of Haiti for its timely and frank responses to the Committee's questions and commended Mr. Bruni Celli, the work he had accomplished as Special Rapporteur of the Commission on Human Rights on the situation of human rights in Haiti, and for the time, energy and intellectual activity he had devoted to restoring democracy in that country.

The meeting rose at 6 p.m.